

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

UNITED STATES POSTAL SERVICE

and

Case 5-CA-30474

CHARLOTTESVILLE AREA LOCAL 1657,  
AMERICAN POSTAL WORKERS UNION, AFL-CIO

*Christopher R. Coxson, Esq.*, for the General Counsel.

*James F. Brooks*, President, of Charlottesville,  
Virginia, for the Charging Party.

*Patrick M. Devine, Esq.*, and *Karen Kaldahl,*  
*Esq.*, of Washington, DC, for Respondent.

DECISION

Findings of Fact and Conclusions of Law

Benjamin Schlesinger, Administrative Law Judge. Two employees, Carlton Gray and George Revels, bid for the same job. Gray was awarded it; Revels complained. Charlottesville Area Local 1657, American Postal Workers Union, AFL-CIO (Union), filed a grievance on behalf of Revels and asked for both employees' applications and bid cards for the job. Respondent United States Postal Service permitted the Union to look at them, but would not permit copies to be made. The complaint<sup>1</sup> alleges that Respondent violated Section 8(a)(5) and (1) of the Act. Respondent denies that it violated the Act in any manner. Respondent is plainly wrong.

Respondent provides postal service for the United States and operates various facilities throughout the United States in the performance of that function. The Board has jurisdiction over Respondent by virtue of Section 1209 of the Postal Reorganization Act. The Union has been a labor organization within the meaning of Section 2(5) of the Act, represents, among others, motor vehicle employees, and has an existing collective-bargaining agreement, which provides for a grievance and arbitration procedure and runs from November 21, 2000, to November 20, 2003.

About March 11, 2002,<sup>2</sup> Respondent posted an announcement for two lead automotive technicians jobs, accompanied by the standard position description, which explained the duties, responsibilities, and requirements of the job and the qualification standards for the job. Listed were 12 "KSAs," the knowledge, skills, and abilities attached to each qualification standard,

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<sup>1</sup> The charge was filed May 30, 2002 and the complaint was issued on August 29, 2002. This case was tried in Charlottesville, Virginia, on January 23, 2003.

<sup>2</sup> All dates are in 2002, unless otherwise indicated.

which applicants had to address in their job applications. By Respondent's rule, the applicants had to prepare one page for each "KSA." Because there was another form for general information (name, address, date of birth, education, employment history, civic organizations, etc.), which had to be filled out on both its front and back sides, a properly completed application for this job would consist of no less than 14 pages, 2 for the application and 12 for the KSAs. Employees who sought those positions had to submit a bid card and a Form 991 by March 21, at 4:00 p.m.

Only two employees, Gray and Revels, bid for one of the jobs; and, by notice dated April 30, Gray was awarded the job. Revels thought that he was better qualified for the job, especially because only he possessed a valid commercial drivers license, which would permit him to drive the vehicles he was supposed to fix. He complained to the Union; and on May 6, the Union requested that Respondent make available the following "in order to properly identify whether or nor a grievance does exist and, if so, their relevancy to the grievance: Copy of all Application forms for duty assignment # 4720266 (991's & bid cards)."

On May 10, the Union filed a grievance on Revels' behalf, alleging not only that Revels was more qualified but that he was being discriminated against because of his color and that Respondent had not provided the information that the Union had requested in connection with the grievance. The Union complained about Respondent's failure to supply the information by filing a separate grievance on May 16; and, when Respondent did not favorably reply to either grievance, the Union took both of them to the second and third steps of the grievance process, where they now await action.

There is a dispute regarding what Respondent did in response to the Union's request. Union President James Brooks recalled that, on May 20, he called Human Resource Specialist Susan Thompson in answer to her page and that she replied that she had the information and he was allowed to come up and review it, but she had instructions from Rose Barner, manager of the vehicle maintenance facility in Charlottesville, that he was not allowed to have copies of it, or to take it out of the office. He replied by saying that his information request was to have copies; and, for him to review it, without being able to make a copy, would not do him any good; and he rejected the offer. Thompson and another of Respondent's witnesses recalled that Brooks came to the office; and, when presented with the same offer of viewing the documents, without Respondent making copies for him, rejected the offer.

In either event, and I favor Respondent's rendition, it is undisputed that Respondent offered, without limitation, the relevant documents for Brooks' inspection. That answers Respondent's argument in its brief that it had no duty at all to produce the requested material because it contained confidential information. The only reason given by Thompson to Brooks for not supplying copies was that she was just following orders. The record is silent of any claim of confidentiality or any other reason, valid or not, that Respondent refused to supply copies of the documents or permit them to be copied. As stated by the First Circuit in *Communications Workers Local 1051 v. NLRB*, 644 F.2d 923, 925 (1981), a case in which the employer had produced documents for review and handcopying, but would not allow photocopies: "[T]he company, having provided for handcopying all of the information requested by the union, may not now argue that it had no duty at all to disclose the requested material." In any event, Respondent's reliance on decisions involving physician-patient privilege and supporting the withholding of patients' names and addresses have no bearing on Respondent's actions in this proceeding. In addition, Brooks testified that he had previously received similar forms for other employees and had no problem with Respondent's redaction of the employees' social security numbers, mailing addresses, and home telephone numbers. In any event, Board law required Respondent to raise with the Union its problems involving confidential information and to seek

accommodation of its interests. *Minnesota Mining and Manufacturing Co.*, 261 NLRB 27 (1982), enf. sub nom. *Oil Workers Local 6-418 v. NLRB*, 711 F.2d 348 (D.C. Cir. 1983).. This, Respondent did not do.

5 Otherwise, Respondent appears to agree that what the Union requested should have been supplied under Board law. Indeed, Respondent should certainly be aware of what the Board wrote in *Postal Service*, 337 NLRB No. 130 (2002), quoting, slip op. at 3, from *Asarco, Inc.*, 316 NLRB 636, 643 (1995), enf. in relevant part 86 F.3d 1401 (5th Cir. 1996):

10 In dealing with a certified or recognized collective-bargaining representative, one of the things which employers must do, on request, is to provide information that is needed by a bargaining representative for the proper performance of its duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Following an appropriate request, and limited only by considerations of relevancy, the  
15 obligation arises from the operation of the Act itself. *Ellsworth Sheet Metal*, 224 NLRB 1506 (1976). In each case, the inquiry is whether or not both parties meet their duty to deal in good faith under the particular facts of the case. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). Processing grievances is, as argued by counsel for the General Counsel, clearly a responsibility of a union, and an  
20 employer must provide information requested by the union for the purposes of handling grievances. [7] *TRW, Inc.*, 202 NLRB 729 (1973). The legal standard concerning just what information must be produced is whether or not there is “a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees’ exclusive bargaining  
25 representative.” *Bohemia, Inc.*, 272 NLRB 1128 (1984). The Board’s standard, in determining which requests for information must be honored, is a liberal discovery-type standard. *Brazos Electric Power Cooperative*, 241 NLRB 1016 (1979). The Board, in determining that information is producible, does not pass on the merits of the grievance underlying a request such as was made in this  
30 case; and the union is not required to demonstrate that the information sought is accurate, nonhearsay, or even ultimately reliable. *W. L. Molding Co.*, 272 NLRB 1239 (1984).

35 <sup>7</sup>As explained in *Worcester Polytechnic Institute*, 213 NLRB 306, 307-308 (1974) (footnote omitted):

40 The duty of employers to provide information relevant to the statutory representative’s administration of a collective-bargaining agreement and to enable it to determine whether issues arising therefrom should or should not be processed as grievances is now a matter of settled law. Thus, in *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1965), the Supreme Court held that the duty to bargain in good faith imposes an obligation to furnish relevant information needed by a union for effective administration of an existing contract and the processing of grievances. The Court went on to conclude that such a duty includes information requested having a “potential” relevance to the union’s evaluation of the prudence in pursuing a contractual claim against an employer. [*NLRB v. Acme Industrial Co.*, 385 U.S. at 436-438.]

45 Brooks was being candid when he explained that the documents needed a thorough review and a comparison, which could not be accomplished by merely looking over them. “[Y]ou need time especially with a case like this to review to see if Mr. Revels’ information – because it’s a fairly [lengthy] document, 12, 13 or 14 pages. You’re going to need to look at each of those and compare them with Mr. Grey’s to see which one was the better qualified, or whether Mr.  
50 Revels would have a case that we could try.” The requested material was relevant. Accordingly, the question in this proceeding boils down to the same issue that faced the First Circuit in *Communications Workers Local 1051*, cited above, whether this giant employer’s “atavistic . . .

insist[ance] on a quill and scroll ritual,” 644 F.2d at 925, is a lawful response for information under Section 8(a)(5) and (1) of the Act. I conclude that it is not.

A generation ago, the Board concluded that “sound policy dictates that required documentary information should be furnished by photocopy,” except for “exceptional cases” involving questions of confidentiality, lack of photocopying equipment, or undue inconvenience. *American Telephone & Telegraph Co.*, 250 NLRB 47, 47 (1980), enforced in *Communications Workers Local 1051*. If it were not true in 1980, it is certainly true that there is a universal practice of all businesses of using photocopying equipment in their business affairs. And if businesses do not have their own copying machines, there is certainly the ubiquitous Kinko’s or other such copying business readily available. Respondent relies, however, on *Abercrombie & Fitch Co.*, 206 NLRB 464 (1973) and *Roadway Express, Inc.*, 275 NLRB 1107 (1985), to support the proposition that, where a document is brief, copies of it need not be provided, and *Cincinnati Steel Castings Co.*, 86 NLRB 592 (1949), that an employer is not obligated to furnish relevant information in the exact form requested by the union. Whatever vitality these decisions may have in 2003, when copying machines no longer require liquid toners, when copies no longer fade after a year, and when people use the word “Xerox” without a capital “X,” these decisions have no application to documents that consist of at least 28 pages and require a detailed analysis to compare the relative merits of two persons bidding for the same job.

There was no excuse for Respondent’s failure to give the Union copies of these documents. I find that Respondent violated Section 8(a)(5) and (1) of the Act.

#### Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. More particularly, Respondent shall be ordered to turn over copies of the requested information or the documents themselves, permitting the Union to obtain copies. In either event, the Union shall pay the reasonable expense for the copies.

The General Counsel requests that the notice be posted districtwide, relying on a decision of the remedy recommended by Administrative Law Judge Keltner Locke in *Postal Service*, JD(ATL)-39-02, 2002 WL 1825410 (2002). Judge Locke relied on the fact that Respondent had committed similar violations in at least five different postal facilities in its Houston district. Here, only the Charlottesville facility is directly involved, although it appears that Barner’s office is in the Richmond district office, whatever that is, for there is nothing in the record that indicates what Respondent’s relevant district is, and Brooks thought that she was the manager of the whole Richmond district. Other than that, this proceeding is a local one; and, although there have been many violations of Section 8(a)(5) and (1) of the Act found against the Postal Service throughout the nation, as noted in Judge Locke’s decision and in *Postal Service*, 337 NLRB No. 130, slip op. at 1 fn. 2 (2002), there has been no proof that there is a nationwide or districtwide policy involving the refusal to permit copying of relevant documents. In fact, Brooks had previously been given copies of the same forms, involving different employees, that Respondent refused to supply in this proceeding. I decline to recommend this relief.

The General Counsel also requests that Respondent reimburse the Board and the Union for all costs and expenses incurred in the investigation, preparation, and litigation of this proceeding. The Board provides such a remedy only in cases involving frivolous defenses and in cases involving unfair labor practices that are flagrant, aggravated, persistent, and pervasive. *Frontier Hotel & Casino*, 318 NLRB 857, 860-862 (1995), enf. denied in relevant part sub nom. *Unbelievable, Inc. v. NLRB*, 118 F.3d 795 (D.C. Cir. 1997). There is no flagrant activity in this

proceeding, at least in the sense found in *Frontier Hotel*. One of Respondent's two principal defenses at the hearing was frivolous, that the Union should not be entitled to copies because Brooks never had sought permission to conduct union business at the time that he was talking to Thompson. The other was meaningless, that Brooks refused the tender of the documents in Thompson's office, rather than on the telephone, as he testified.

A third defense in Respondent's brief was that the Union refused to bargain about its refusal to accept anything short of the copies of the material it sought, a rather nonsensical attempt to bypass its own obligations under the Act. Other than that, Respondent's brief relies on the confidentiality of the documents, when there was no proof that that was a reason for refusing to permit copies of the documents, and on the fact that they are brief and thus copies need not be made. It is this latter contention which is, at least, based on some Board law; and, although I disagree with Respondent's contentions, there is in the Board's decisions at least something that Respondent could legitimately argue from, claiming that 12 of the pages in Revels' application contained a total of 46 lines of text. (I count 67 lines and note that the font size is quite small. Gray's application has never been produced, so it is not known how lengthy it is.) In *Abercrombie & Fitch*, supra, the Board found that the employer did not violate the Act when it did not provide a copy of a document of three and one-half pages. That being said, I decline to find that Respondent's defense was so frivolous as to warrant litigation fees.

On these findings of fact and conclusions of law and on the entire record, including my reading of the briefs filed by the General Counsel and Respondent, I issue the following recommended<sup>3</sup>

#### ORDER

Respondent United States Postal Service, Charlottesville, Virginia, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Charlottesville Area Local 1657, American Postal Workers Union, AFL-CIO (Union) as the exclusive bargaining agent of its motor vehicle employees in the appropriate bargaining unit by failing and refusing to furnish the Union with copies of and to permit the Union to make copies of certain requested documents, which were and are necessary and relevant to the Union's performance of its function as the exclusive bargaining agent of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

#### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union copies of or permit it to make copies of all application forms for duty assignment # 4720266 (991's & bid cards).

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<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Within 14 days after service by the Region, post at its facility in Charlottesville, Virginia, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 20, 2002.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. March 10, 2003

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Benjamin Schlesinger  
Administrative Law Judge

<sup>4</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to bargain in good faith with Charlottesville Area Local 1657, American Postal Workers Union, AFL–CIO (Union) as the exclusive bargaining agent of our motor vehicle employees in the appropriate bargaining unit by failing and refusing to furnish the Union with copies of and to permit the Union to make copies of certain requested documents, which were and are necessary and relevant to the Union's performance of its function as the exclusive bargaining agent of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL furnish the Union copies of or permit it to make copies of all application forms for duty assignment # 4720266 (991's & bid cards).

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UNITED STATES POSTAL SERVICE

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

103 South Gay Street, The Appraisers Store Building, 8th Floor, Baltimore, MD 21202-4061  
(410) 962-2822, Hours: 8:15 a.m. to 4:45 p.m.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (410) 962-3113.